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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,867	09/10/2001	Stephen Murten	ATKINSON	2715

7590 12/02/2003

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EXAMINER

CHIN SHUE, ALVIN C

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary	Application No.	Applicant(s)	
	09/857,867	MURTEN, STEPHEN	
	Examiner	Art Unit	
	Alvin C. Chin-Shue	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 43-46, 48-50, 52-56, 58-60, 62-64 is/are rejected.
- 7) ☒ Claim(s) 47, 51, 57 and 61 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 43-64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The preamble of the claims stated that only the safety apparatus is being claimed, while positive limitation in claims 43, 53 and 64 to a person being tethered to the cable appears to be claiming a combination of the apparatus with a person, which renders the claims indefinite. Furthermore, it is inappropriate to be claiming a human being as part of one's invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 43-45, 48, 50 and 64 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Palmer '305. Palmer shows a vertical support with upper part 28, 38, lower part 46, first fixing means 64 and second fixing means 56.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 53-55,58 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer '305. The claimed method would have been obvious to one of ordinary skill in the art in view of the structure of Palmer.

Claims 46 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer in view of Pollman. Palmer shows the claimed apparatus with the exception of the strengthening components. Pollman shows internal (7) and external (spiral corrugation) strengthening components. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Palmer with internal and external strengthening components for reinforcing his vertical supports.

Claims 43-45,48,50,53-55,48 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer '305 in view of Palmer '150. Palmer '305 shows the claimed apparatus with the exception of the stable lower fixing means. Palmer '150 shows a stable lower fixing means at 28,30,40,48. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify

Palmer to comprise a stable self-supporting fixing means, in lieu of his at 56,24, to enable a stable self-supporting lower fixing means. The claimed method would have been obvious to one of ordinary skill in the art in view of the modified apparatus of Palmer '305.

Claims 49,52 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer '305 and Palmer' 150 as applied to claims 43 and 54 above, and further in view of either Burske or Murray. Both Burske and Murray show multiple tensioned cables. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Palmer '305 with multiple and tensioned cables to allow attachment of a plurality of tethers.

Claims 46 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer '305 and Palmer '150 as applied to claims 43 and 53 above, and further in view of Pullman as applied above.

Claims 43-45,48,50,53-55,58-60,62,63 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Japanese pat. 36604 to Takada or German pat. '323 to Schutte in view of Palmer '150 or '305. Both Takada and Schutte show the claimed apparatus with the exception of the two part vertical support. Palmer '150 and '305 both show two-part vertical support adjustably

attached between their first and second fixing means. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the vertical support of either Takada or Schutte to comprise upper and lower parts adjustably attached between their first and second fixing means to enable vertical adjustment of their vertical supports. The claimed method would have been obvious to one of ordinary skill in the art in view of the modified apparatus of either Takada or Schutte.

Claims 49, 52 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Takada or Schutte and either Palmer '150 or '305 as applied to claims 43 and 54 above, and further in view of either Burske or Murray. Both Burske and Murray show multiple tensioned cables. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide either Takada or Schutte with multiple and tensioned cables to allow attachment of a plurality of tethers.

Claim 46 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Takada or Schutte and either Palmer '150 or '305 as applied to claims 43 and 53 above, and further in view of Pullman as applied above.

Claims 47,51,57 and 61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin C. Chin-Shue whose telephone number is

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703-308-2475. The examiner can normally be reached on Monday-Friday, 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-3008-1113.



Alvin C. Chin-Shue
Primary Examiner
Art Unit 3634

ACS